



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,185	06/05/2001	Steven A. Kampff	PIP-73-KAMP-US	5878

31518 7590 04/17/2007
NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA, VA 22304

EXAMINER

DURAN, ARTHUR D

ART UNIT	PAPER NUMBER
----------	--------------

3622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/873,185	Applicant(s) KAMPFF ET AL.	
	Examiner Arthur Duran	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-47 have been examined.

Response to Amendment

2. The Amendment filed on 3/22/07 is insufficient to overcome the prior rejection.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/22/2007 has been entered.

Response to Amendment

The Declaration under 37 CFR 1.132 filed 3/22/2007 is sufficient to overcome the Rochon (2002/0046085) reference.

The Declaration filed on 3/22/2007 under 37 CFR 1.131 has been considered but is ineffective to overcome the Rochon (WO 00/68849) reference.

Please see MPEP 715.02. The "whole invention" must be demonstrated as priorly possessed by the Applicant. And, Applicant's Remarks dated 3/22/2007 on pages 39-42 state that the Applicant did not possess the "whole invention" prior to the Rochon (WO 00/68849) reference priority date.

Hence, the Rochon (WO 00/68849) reference is still a valid prior art reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deaton (5,687,322) in view of O'Brien (5,832,457).

Claim 1, 3-5, 7-19, 21-23, 25-27, 29-41, 43-47: Deaton discloses a computer network implemented system for implementing product sampling programs.

Deaton discloses a manufacturer providing free items, promotional items, and product samples:

“(500) Another aspect of the present invention is the generation of a random or lottery coupon. The system may be programmed to reward random customers with a particular reward. For example, every repeat customer might receive a coupon for a free turkey or six-pack of drinks by the coupon printer. Alternatively, the generation of such gifts could be randomly generated in order to provide more of a lottery atmosphere to the awards. Different types of shoppers, as determined by their shopping history, might be provided with different random prizes. Alternatively, a "grab bag" coupon may be issued which covers a group of incentives, which may be accessed in a random fashion as will be subsequently described (col 75, lines 9-21).

Art Unit: 3622

(562) (2) In another example, on a product level, the same widow woman might consider an offer for a free 12-oz. box of detergent very pertinent, but the housewife with five dirty teenagers might not find that product volume a sufficient incentive to change brands (col 102, lines 15-20).

(576) Once those two groups are arrived at, they may be overlaid such to incent someone who is infrequent to a department or to the store and it is desired to incent them from the retailer standpoint. For example, it may be noted that a store's customers are not buying a manufacturer's ham and the grocer says people are not frequenting his pharmacy. So by combining forces to go after a common customer, the manufacturer and the retailer can target market people who are infrequent to the pharmacy and use ham as an incentive of those who are infrequent to ham. This approach provides cost sharing between the retailer and the manufacturer, because a refined population that is infrequent to both can be targeted, costs can be shared and the incentive can be increased. For example, using the example of ham and the pharmacy, the manufacturer of ham might agree to reduce the cost of ham and the retailer agrees to pay for the other half of the ham if the customer will come to the pharmacy. By combining forces, the customer gets a free ham, the manufacturer and store reduce costs, and the value of the incentive is heightened (col 105, lines 15-35).

(587) A store has been allowed 15,000 promotional items by the manufacturer to give away in their NOW-Coupon system. These promotional items are made up of 3,000 each of five different flavors of edible widgets. A decision is made

Art Unit: 3622

to direct 1,000 of each flavor as Coupon "A" incentives and direct 500 of each flavor to the B, C, D, and E categories. Since less edible widgets are allotted to the primary shopper categories, a "Grab Bag" is set up for each with a random ratio to control the rate at which the coupons are dispersed.

The following is the configuration for Coupon "B's".

(588) Coupon category: Coupon "B"

(589) Random ratio: 1:5

(590) Grab Bag Coupon #1--Free Box of Edible Widgets--Grape (Issue: 500)

(591) Grab Bag Coupon #2--Free Box of Edible Widgets--Cherry (Issue: 500)

(592) Grab Bag Coupon #3--Free Box of Edible Widgets--Strawberry (Issue: 500)

(593) Grab Bag Coupon #4--Free Box of Edible Widgets--Lemon (Issue: 500)

(594) Grab Bag Coupon #5--Free Box of Edible Widgets--Orange (Issue: 500)" (col

106, lines 7-30).

Deaton further discloses the manufacturer interacting with the retailer:

"(496) The system also enables the tracking of "bargain hunter" customers.

Retail stores traditionally stock depending upon the size and amount of floor space. In grocery stores, between 30,000 and 60,000 items may be stocked at any point in time. Several hundreds of these items may be involved in some type of promotion by the manufacturer or distributors of the product, or the store. The present system stores a shopping history or spending history of the customer to identify whether or not the customer is a "bargain hunter" and to what degree the customer is price sensitive (col 74, lines 17-29).

Art Unit: 3622

(572) The history of products being purchased is stored and organized into arbitrary groups by manufacturer in the present database, so that a manufacture does not take business from himself. An average buying cycle may be determined over the entire customer base. As an example, assume for this entire store or this entire region, the average consumption of a coffee product is 4 ounces per week. Although the coffee is only bought every eight weeks, the consumption rate of that coffee is 4 oz. a week. The system may store the average consumption rate for the customer base as a whole so that the store can use that as a starting point for saying that a customer is at or below this consumption rate. That says nothing about the individual household, but the average consumption rate is a starting point that says on a new customer or a new promotion for a coffee, the store has a standard to begin with. Therefore, a customer who buys 3 oz. a week should be incented (col 104, lines 15-30).

Deaton further discloses targeting the user:

“(568) Recognizing that every group of customers, and in fact, every individual customer has different valuations of an incentive, and depending on whether or not a store has the product or whether the store is short of on inventory a product, the incentive may be changed. If customer response is monitored and the customer does not respond, the incentive can be increased in successive layers until the store finally gets the desired response. This approach provides for an enormous amount of efficiency, because in the "\$2 off your next shopping visit" , example, if the store provided this incentive to

Art Unit: 3622

the 2,767 customers that are in Table 5 who shopped only twice in the last 8 weeks, it is unlikely that greater than a 15% participation would be obtained. If so, that 15% may be left at a \$2 incentive because it works for them. But the 85% that the program did not work for will need to have their incentive increased. The present system allows a store to customize the incentive, whether it is on a shopping visit criteria, or a product group, or a department, or an individual specific product basis (col 103, lines 5-25).

(561) Any one incentive given to a multiplicity of shoppers is evaluated differently by each individual customer. Take two examples: (1) consider an incentive that provides \$2 off on the next shopping visit, if the customer spends \$25 and do it within a week. If the customer is a widowed, single woman living on a fixed income, that \$2 might represent 10% of her weekly food budget and therefore be a pertinent valuable incentive to her. On the other hand, to a housewife who has five teenagers at home and spends \$250 a week, \$2 off may not be a sufficient incentive to modify her behavior in any significant way (col 102, lines 5-15).

(563) So, each individual incentive given to a group of people is evaluated differently by those people. Assuming several thousand people shop a store twice in the prior 8 weeks, that is hardly a homogeneous group. So, it is important to provide an incentive to those who meet an infrequent shopping history criteria, but once that incentive is made, it should be recorded in the history file of that individual shopper" (col 102, lines 20-28).

Art Unit: 3622

Deaton further discloses targeting the user(s) and the manufacturer providing samples/free items/promotional items/promotions and the manufacturer interacting with retailer(s) to provide targeted promotions:

“(574) So, if the store obtains the consumption rate of a product group, then the store can obtain a much more refined criteria by which to judge the individual ID or customer ID or individual household. The store or manufacturer of a product can thus structure an inducement based on the customer's consumption rate. It may be inappropriate to give the single woman an inducement 50.cent. off a 5 lb. can of Folgers when that is a two year supply for her. So, it is important to establish the consumption rate for an individual ID and or household and then set up a criteria with respect to an individual manufacturer's product group. While a customer is consuming from this general group of products, "X" amount per week, the customer is detected as consuming very little of a particular manufacturer's product. The store can then incent that customer because he is an infrequent customer to the particular product. The incentive can be based on something that is appropriate to the customer's consumption rate. It can be an incentive on a big size if the customer is a big user, or a small size if the customer is a small user. The present system can thus determine and distribute an individualized, personalized, custom-tailored, inducement based on individualized consumption rate monitoring (col 104, lines 43-65).

(575) The groupings of products can be manipulated based on any number of

Art Unit: 3622

variables. For example, it may be desired to manipulate a product group based on seasonality. A manufacturer, for example, might want to include hot cereals in the four winter months and exclude it from their product group in the summer months. The group of products may thus be manipulated to bring products in and out of that group based on holidays or based on any number of variables that are pertinent to the manufacturer. While the retailer may look at infrequent shoppers more from the perspective of store visits and department visits and purchases, the manufacturer looks at the shopper from the perspective of meeting an infrequent criteria with respect to their product group, arbitrary product group or a specific product (col 104, line 65-col 105, line 15).

(576) Once those two groups are arrived at, they may be overlaid such to incent someone who is infrequent to a department or to the store and it is desired to incent them from the retailer standpoint. For example, it may be noted that a store's customers are not buying a manufacturer's ham and the grocer says people are not frequenting his pharmacy. So by combining forces to go after a common customer, the manufacturer and the retailer can target market people who are infrequent to the pharmacy and use ham as an incentive of those who are infrequent to ham. This approach provides cost sharing between the retailer and the manufacturer, because a refined population that is infrequent to both can be targeted, costs can be shared and the incentive can be increased. For example, using the example of ham and the pharmacy, the manufacturer of ham might agree to reduce the cost of ham and the retailer

Art Unit: 3622

agrees to pay for the other half of the ham if the customer will come to the pharmacy. By combining forces, the customer gets a free ham, the manufacturer and store reduce costs, and the value of the incentive is heightened (col 105, lines 15-32).

(587) A store has been allowed 15,000 promotional items by the manufacturer to give away in their NOW-Coupon system. These promotional items are made up of 3,000 each of five different flavors of edible widgets. A decision is made to direct 1,000 of each flavor as Coupon "A" incentives and direct 500 of each flavor to the B, C, D, and E categories. Since less edible widgets are allotted to the primary shopper categories, a "Grab Bag" is set up for each with a random ratio to control the rate at which the coupons are dispersed.

The following is the configuration for Coupon "B's".

(588) Coupon category: Coupon "B"

(589) Random ratio: 1:5

(590) Grab Bag Coupon #1--Free Box of Edible Widgets--Grape (Issue: 500)

(591) Grab Bag Coupon #2--Free Box of Edible Widgets--Cherry (Issue: 500)

(592) Grab Bag Coupon #3--Free Box of Edible Widgets--Strawberry (Issue: 500) (col 106, lines 8-25)

(651) The following provides additional information on how the present system enables targeted marketing to households which are infrequent shoppers of a particular product group. Assume a manufacturer of five varieties of chocolate chip cookies (BRAND A) wants to target marketing at households who historically demonstrate an infrequency to their product group. The following parameters

Art Unit: 3622

are set in a group of grocery stores utilizing the present invention (col 113, lines 20-30);

(652) Householding is activated linking the various accounts of various payment instruments within a single household based on the household's telephone number ().

(653) Historical shopping history is transferred between stores to ensure purchases at all locations is merged.

(654) The consumption of the following products are tracked in order to arrive at an average rate of consumption of bakery type snack products (PRODUCT TYPE):

(655) 1. Manufacturer's own product group.

(656) 2. Other manufacturer's chocolate chip cookies (BRANDS B, C, and D)

(657) UPC's and product sizes in ounces are stored in the Bar Code Tracking Table (BCTT)" (col 113, lines 30-45).

Additionally, Deaton discloses multiple retailers/stores (col 58, lines 25-36; col 63, lines 23-30; col 63, lines 50-61; col 74, lines 17-26). Deaton discloses that different offers can be sent to different stores (col 104, lines 15-30; col 76, lines 55-68; col 4, lines 51-61; col 83, lines 10-25).

Deaton discloses providing free items, promotional items, and samples (col 75, lines 9-21; col 102, lines 15-20; col 105, lines 15-35; col 106, lines 7-30;).

Deaton discloses a central computer system/local computer system architecture (col 58, lines 25-36; Fig. 19; Fig. 25; col 76, lines 55-68; col 83, lines 10-25).

Art Unit: 3622

Deaton discloses a manufacturer promotion criteria (col 104, lines 43-65; col 104, lines 65-col 105, line 15; col 105, lines 15-32; col 74, lines 17-29; col 104-lines 15-30; col 113, lines 30-45; col 103, lines 47-65).

Also, Deaton further discloses mailing promotions to users (col 7, lines 33-38; col 63, line 60; col 64, line 5; col 59, lines 60-65; col 66, lines 58-60).

Deaton does not explicitly disclose mailing samples to the users or providing samples to the user at the point of sale.

However, O'Brien discloses mailing samples to the users or providing samples to the user at the point of sale (col 13, lines 35-51; Figure 5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add O'Brien's mailing samples to the users or providing samples to the users at the point of sale to Deaton's mailing promotions to users and providing promotions at the point of sale and Deaton's providing free/promotional/sample items. One would have been motivated to do this in order to better promote purchasing.

Claims 2, 6, 20, 24, 28, 42:

In regards to claims 2, 6, 24, 28, Deaton does not explicitly disclose the manufacturer or retailer making counteroffers.

However, Deaton discloses the manufacturer and retailer interacting and communicating in providing targeted promotions to the user. Deaton further discloses the manufacturer providing promotions based on retailer data or vice versa. Also, Deaton discloses the manufacturer and retailer communicating on providing promotions individually or together or in collaboration (see above). Therefore, it would have been obvious to one having ordinary skill in

Art Unit: 3622

the art at the time the invention was made that negotiations/communications/offers/counteroffers can occur between the manufacturer and retailer. One would have been motivated to do this in order to provide a way for the manufacturer and retailer to better communicate in the providing of manufacturer and/or retailer targeted promotions to the user(s).

In regards to claim 20 and 42, Deaton does not explicitly disclose generating print files for printing delivery paperwork. However, Deaton discloses a printer (Fig. 21) and inventory records (col 103, lines 5-25). And, the combination of Deaton and O'Brien discloses mailing items to users. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the prior art can print the necessary information for item delivery. One would have been motivated to do this in order to have a way to provide the needed information mailing/delivery.

5. Claims 1-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deaton (5,687,322) in view of Rochon (WO 00/68849).

Please see the rejection above utilizing Deaton.

Also, Deaton further discloses mailing promotions to users (col 7, lines 33-38; col 63, line 60; col 64, line 5; col 59, lines 60-65; col 66, lines 58-60).

Deaton does not explicitly disclose mailing samples to the users or providing samples to the user at the point of sale.

However, Rochon discloses mailing samples to the users or providing samples to the user at the point of sale (Abstract; page 6-7, "in step 6"; page 9, "step 18"; claims 11, 26; Figures 2-5).

Art Unit: 3622

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Rochon's mailing samples to the users or providing samples to the users at the point of sale to Deaton's mailing promotions to users and providing promotions at the point of sale and Deaton's providing free/promotional/sample items. One would have been motivated to do this in order to better promote purchasing.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-47 rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rochon (WO 00/68849).

Rochon discloses multiples targeted samples to users from a manufacturer provided to multiple retailers where the samples can be provided via mail or at a POS and where the targeting information can be coordinated via a central/local architecture (Abstract; pages 2-3, page 6-7, "in step 6"; page 9, "step 18"; pages 11-12; claims 11, 26; Fig. 2, 3, 4, 5).

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are not found persuasive.

Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

Examiner further notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Also, Examiner notes that it must be presumed that the artisan knows something about the art apart from what the references disclose. *In re Jacobv*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art apart from what the references disclose. *In re Jacoby*. Also, the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art

Art Unit: 3622

without any specific hint of suggestion a particular reference. In re Bozek, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F.2d 656, USPQ 12 (CCPA 1977).

Additionally, Examiner notes the following.

Please see the Response to Amendments above. Please note that the Rochon (2002/0046085) reference is no longer a valid reference. However, the Rochon (WO 00/68849) reference is still a valid reference.

Hence, Rochon (WO 00/68849) is still a valid prior art reference.

Also, on page 19 of the Remarks dated 3/22/2007, Applicant states, "the applicant first notes that O'Brien does not disclose distributing product samples at the point of sale."

However, O'Brien discloses mailing samples to the users or providing samples to the user at the point of sale (col 13, lines 35-51; Figure 5). Please note that O'Brien discloses providing samples in the store and also that in Figure 5 that O'Brien discloses a cash register and that at the cash register that coupons can be provided. Also, O'Brien discloses the following:

"(49) In addition to the issuance of coupons, manufacturers sometimes distribute product samples to consumers to promote their products.

Distribution can be made in stores, on street corners, or by mail, and can be best described as a costly and unfocused approach, from a marketing standpoint, since products may be given to people who are unlikely to want them or use them. A more focused approach is to use the present invention in conjunction with triggered coupons. When a consumer is identified from a panel diary

Art Unit: 3622

study, or when a consumer with a frequent shopper identification makes purchases that identify the consumer as a candidate for target marketing, the consumer's name is added to a special mailing list for specific manufacturer samples. This filtered product sampling would provide greater exposure to the consumers most likely to purchase the product, at a lower cost” (col 13, lines 35-51).

Hence, it is obvious in light of O’Brien that the samples that are provided in the store can be provided at the same place or time that the coupons are provided. And, the coupons can be provided at the cash register.

Also, on page 19, Applicant states, “This is because Deaton only discloses the concept of using coupons.”

However, as noted in the citations in the rejections above, Deaton discloses giving away free turkey, free ham, free sodas, free drinks, free “widgets”, free ice cream, free drinks, free diapers, free milk for promotional purposes.

Also, the following citations from Deaton further demonstrate how Deaton gives away products for promotional purposes:

“(562) (2) In another example, on a product level, the same widow woman might consider an offer for a free 12-oz. box of detergent very pertinent, but the housewife with five dirty teenagers might not find that product volume a sufficient incentive to change brands (col 102, lines 15-20).

(587) A store has been allowed 15,000 promotional items by the manufacturer to give away in their NOW-Coupon system. These promotional items are made up of 3,000 each of five different flavors of edible widgets. A decision is made

Art Unit: 3622

to direct 1,000 of each flavor as Coupon "A" incentives and direct 500 of each flavor to the B, C, D, and E categories. Since less edible widgets are allotted to the primary shopper categories, a "Grab Bag" is set up for each with a random ratio to control the rate at which the coupons are dispersed. The following is the configuration for Coupon "B's". (col 106, lines 7-30).

Also, against the assertion that Deaton cannot use the mail, it is noted that Deaton discloses mailing promotions to the user(s)/targeted user(s) (col 7, lines 30-50).

Also, on page 43, in regards to the Rochon (WO 00168849) reference, Applicant states, "Rochon in fact does not disclose providing samples to the user at the point of sale".

However, Rochon (WO 00168849) discloses providing samples to the user at the point of sale (claims 11 and 26).

Hence, the rejections stated above render obvious the features of the Applicant's claimed invention. Hence, the rejection stated above are still valid rejections.

Additionally, Examiner notes the following.

In regards to Applicant's remarks that there are not multiple retailers, or that the first offer and second offer are different from one another, please note the following.

Deaton discloses multiple retailers/stores (col 58, lines 25-36; col 63, lines 23-30; col 63, lines 50-61; col 74, lines 17-26). Deaton discloses that different offers can be sent to different stores (col 104, lines 15-30; col 76, lines 55-68; col 4, lines 51-61; col 83, lines 10-25).

Applicant states that Deaton does not disclose providing samples. However, Deaton discloses providing free items, promotional items, and samples (col 75, lines 9-21; col 102,

Art Unit: 3622

lines 15-20; col 105, lines 15-35; col 106, lines 7-30;). Additionally, the other prior art cited above discloses providing samples.

Applicant states that Deaton does not disclose a central computer system/local computer system architecture. However, Deaton discloses a central computer system/local computer system architecture (col 58, lines 25-36; Fig. 19; Fig. 25; col 76, lines 55-68; col 83, lines 10-25).

Also, O'Brien discloses a central computer system/local computer system architecture (Figure 5).

Also, Rochon discloses a central computer system architecture (Figure 2).

Applicant states that Deaton does not disclose a manufacturer promotion criteria. However, Deaton discloses a manufacturer promotion criteria (col 104, lines 43-65; col 104, lines 65-col 105, line 15; col 105, lines 15-32; col 74, lines 17-29; col 104-lines 15-30; col 113, lines 30-45; col 103, lines 47-65).

Also, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Art Unit: 3622

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a) Please see the attached articles on Sampling from PROMO Magazine;
- b) Please see the attached articles on Sampling from DM News;
- c) Aggarwal (7,013,286) discloses targeting and providing product samples;
- d) Goldstein (20020029173) discloses providing product samples;
- e) Barnett (6,321,208) discloses providing targeted promotions to user(s).
- f) Porter (5,209,349):

“(4) In the past, such consumer product samples were typically distributed by direct-mail techniques, door to door delivery, street corner give-away and store sampling, which, in the last few years, have become very expensive. By utilizing demographic distribution information, manufacturers of products could target specific areas of a geographic locale for their distribution of product samples. However, even this method had a large degree of inefficiency since, as will be readily recognized, many persons living within a particular geographic locale are not potential consumers for all types of products”.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

Art Unit: 3622

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arthur Duran
Primary Examiner

Application/Control Number: 09/873,185
Art Unit: 3622

Page 22

Art Unit 3622

3/29/2007